

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

New Generation Hobbies

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File No.: EB-08-SE-696

CITATION

**ILLEGAL MARKETING OF UNAUTHORIZED FREQUENCY DEVICES CAPABLE OF
OPERATING ON RESTRICTED FREQUENCIES**

Adopted: July 1, 2011**Released: July 6, 2011**

By the Acting Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. This is an official **CITATION** issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (“Communications Act”),¹ to New Generation Hobbies (“New Generation”) for marketing in the United States unauthorized radio frequency devices that operate on restricted frequencies in violation of section 302(b) of the Communications Act, and sections 2.803 and 15.205(a) of the rules (“Rules”) of the Federal Communications Commission (“Commission” or “FCC”).²

2. New Generation should take immediate steps to come into compliance and to avoid any recurrence of this misconduct. As explained below and as provided in the Communications Act, future violations of the Rules in this regard may subject your company to substantial monetary penalties, seizure of equipment, and criminal sanctions.

II. BACKGROUND

3. In response to a complaint alleging that New Generation was marketing certain video transmitters that operate on restricted frequencies in the 2.4 GHz band, the Spectrum Enforcement Division (“Division”) of the Commission’s Enforcement Bureau issued a letter of inquiry (“LOI”) to New Generation on September 28, 2009.³ At the time of the LOI, Division staff observed that New Generation was marketing the following two 2.4 GHz transmitters on its web site, www.nghobbies.com: LawMate 500 mW 2.4 GHz transmitter and LawMate 1 W 2.4 GHz transmitter.⁴

¹ 47 U.S.C. § 503(b)(5).

² 47 U.S.C. § 302a(b), 47 C.F.R. §§ 2.803, 15.205(a).

³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to New Generation Hobbies (September 28, 2009).

⁴ See www.nghobbies.com (visited April 10, 2009; June 1, 2009; and September 28, 2009).

4. In its October 27, 2009 response to the LOI,⁵ New Generation states that it began marketing these devices on its web site in 2008, and has sold 25 units of the LawMate 500 mW 2.4 GHz transmitter and 25 units of the LawMate 1 W 2.4 GHz transmitter to customers in the United States.⁶ It states that both devices are capable of operating on each of the following frequencies: 2410 MHz, 2430 MHz, 2450 MHz, 2470 MHz, 2370 MHz, 2390 MHz, 2490 MHz, and 2510 MHz.⁷ New Generation indicates that it purchases these two devices from a manufacturer in Taiwan,⁸ and that it does not export to the United States; rather, New Generation claims that it sells the devices in question online via its web site, and maintains that “the customer who makes the purchase is the importer.”⁹

5. In addition, New Generation claims that it does not target United States customers with any of its products.¹⁰ In this regard, it states that it does not advertise or promote any of its products in the United States and that its web site is “located in Canada and not in the United States.”¹¹ Further, it asserts that “[a]s a Canadian company that does not have any affiliates, agents, distributors or resellers in the United States,” it is “not required to be aware of or follow United States and FCC regulations when listing products” on its web site.¹² Nevertheless, New Generation states that “at the beginning of 2009,” it placed “notes and warnings next to product descriptions informing customers to be aware of the legality of their respective purchases and importing such products to the United States.”¹³ New Generation also

⁵ See Letter from Zoltan Pittner, New Generation Hobbies, to Celia Lewis, Paralegal Specialist, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (October 27, 2009) (“LOI Response”).

⁶ *Id.* at 1.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* Division staff did not observe any notices or warnings on or adjacent to the product descriptions for the two transmitters at issue when visiting New Generation’s web site prior to the issuance of the LOI. While New Generation is apparently no longer marketing the LawMate 1 W 2.4 GHz transmitter on its web site, it continues to market the LawMate 500 mW 2.4 GHz transmitter on its web site, http://www.nghobbies.com/cart/index.php?main_page=product_info&cPath=1_50&products_id=102 (visited July 1, August 2, and December 17, 2010, and May 26, 2011). In 2010, the following statements were posted on New Generation’s web site under the product description for the LawMate 500 mW 2.4 GHz transmitter:

Note: The use and operation of this product in most states, countries may require a HAM or Amateur radio license. New Generation Hobbies cannot be held responsible for your actions if you use this product without proper licensing.

Warning!

Important note for US and Canada customers:

Please note, channels [sic] 4,5,6,7 and 8 of this transmitter are outside of the allowed frequency spectrum for US and Canada. These channels cannot be legally used even if you have a Radio Amateur [sic] or HAM license. Please make sure that you obey your countries rules and regulations around use of these devices and use them only on channels 1, 2 and 3. New Generation Hobbies cannot be held responsible for using these transmitters on channels which are outside of the legal allowed frequency ranges.

(continued....)

indicates that there is a warning next to the two devices in question that a U.S. amateur radio license is required to operate the devices due to their power output.¹⁴ Finally, New Generation states that it has “placed additional warnings for the channel numbers which are outside of the allowed U.S. frequency spectrum.”¹⁵

III. APPLICABLE LAW AND VIOLATIONS

6. Section 302(b) of the Communications Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(1) of the Commission’s implementing regulations provides that:

no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless: [i]n the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter.

Additionally, section 2.803(g) of the Rules provides in pertinent part that:

[R]adio frequency devices that could not be authorized or legally operated under the current rules ... shall not be operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed absent a license issued under part 5 of this chapter or a special temporary authorization issued by the Commission.¹⁶

Pursuant to section 15.201(b) of the Rules,¹⁷ intentional radiators,¹⁸ such as video transmitters, must be authorized in accordance with the Commission’s certification procedures prior to the initiation of

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To date, the following statements are posted on the New Generation’s website for the LawMate 500mW 2.4 GHz transmitter:

Disclaimer:

* The frequency band or some of the frequency bands used by this transmitter may be illegal in some countries including Canada and USA. Please make sure you are up to date with the regulations in your country before ordering this product.

** The power level of this transmitter may be illegal in your country. Please check your local regulations and make sure you order this device only if you have the required licensing to use this product.

*** New Generation Hobbies cannot be held responsible for illegal use of this product.

See http://www.nghobbies.com/cart/index.php?main_page=product_info&cPath=1_50&products_id=102 (visited July 1, August 2, and December 17, 2010, and May 26, 2011).

¹⁴ LOI Response at 2.

¹⁵ *Id.*

¹⁶ 47 C.F.R. § 2.803(g).

¹⁷ 47 C.F.R. § 15.201(b).

¹⁸ Section 15.3(o) of the Rules defines an “intentional radiator” as a “device that intentionally generates and emits radio frequency energy by radiation or induction.” 47 C.F.R. § 15.3(o).

marketing¹⁹ in the United States. Section 2.803(e)(4) of the Rules defines “marketing” as the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment or distribution for the purpose of selling or leasing or offering for sale or lease.”²⁰

7. Based on the information provided in New Generation’s LOI Response, the LawMate 500 mW 2.4 GHz transmitter and the LawMate 1 W 2.4 GHz transmitter are both ineligible for a grant of certification. New Generation’s response confirms that both transmitters operate within restricted frequency bands listed in section 15.205(a) of the Rules.²¹ As such, these devices cannot comply with the FCC’s technical standards and therefore cannot be certified as required by Commission Rules or marketed in the United States.

8. New Generation claims that it is not targeting its marketing to customers in the United States and that, as a Canadian company that does not have any affiliates, agents, distributors or resellers in the United States, it is not required to be familiar with or follow FCC regulations. We disagree. Section 302(b) of the Communications Act and section 2.803 of the Rules apply to radio frequency devices marketed in the United States regardless of whether the devices are marketed by a domestic or foreign company. As noted above, “marketing” includes “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment or distribution for the purpose of selling or leasing or offering for sale or lease.”²² New Generation admits that it offered for sale (via its website), sold, and shipped the devices at issue to customers located in the United States. While New Generation claims that it included warnings on its web site informing customers that it may not be legal to operate these devices in the United States,²³ these warnings do not negate New Generation’s violations of the Communications Act and the Commission’s Rules.

9. Furthermore, we emphasize that it is insufficient and misleading for manufacturers and retailers, like New Generation, to include a disclaimer on their websites stating or implying that U.S. consumers bear *sole* responsibility for complying with the applicable legal obligations. Such disclaimers are misleading because they fail to disclose that entities offering unauthorized devices are also violating the Communications Act and the Rules. In this regard, we note that section 2.803 of the Rules is specifically directed at, and enforceable against, persons *selling*, *leasing*, *offering for sale* or *lease*, *importing*, *shipping*, or distributing for the purpose of sale or lease, noncompliant radio devices in the United States. Consequently, New Generation violated the Rules both by offering the device for sale to

¹⁹ 47 C.F.R. § 2.803(e)(4).

²⁰ *Id.*

²¹ Section 15.205(a) allows intentional radiators to transmit only spurious emissions in the restricted frequency bands. 47 C.F.R. § 2.1 defines spurious emissions as “[e]mission[s] on a frequency or frequencies which are outside the necessary bandwidth and the level of which may be reduced without affecting the corresponding transmission of information. Spurious emissions include harmonic emissions, parasitic emissions, intermodulation products and frequency conversion products, but exclude out-of-band emissions.” The subject transmitters intentionally transmit radio frequency energy on restricted frequencies within the 2310-2390 and 2483.5-2500 MHz bands.

²² 47 C.F.R. § 2.803(e)(4).

²³ As noted above, Division staff did not observe these warnings when it visited the New Generation web site prior to the issuance of the LOI. *See supra* note 13. Furthermore, while amateur radio service equipment is exempt from the FCC’s equipment certification requirement, it is a violation of the Commission’s regulations to market in the United States a transmitter that is designed or intended to operate on frequencies outside of the authorized amateur radio service bands if such equipment has not been issued a grant of equipment certification. *See Extended Coverage High Frequency Transceivers*, Public Notice, 1996 WL 242469 (OET, May 13, 1996). The LawMate 500 mW 2.4 GHz and 1 W 2.4 GHz transmitters operate on frequencies outside of the authorized amateur radio service bands, including restricted frequencies listed in section 15.205(a). Thus, these devices are not amateur radio devices exempt from the equipment certification requirements.

U.S. customers and completing the sale transaction, and its use of a disclaimer does not absolve it of liability.

10. Accordingly, we find that New Generation has violated section 302(b) of the Communications Act and sections 2.803 and 15.205(a) of the Rules by marketing in the United States radio frequency devices that are not certified and are not eligible for a grant of certification. We therefore issue this Citation to New Generation for violating the Communications Act and the Rules as discussed above, and we direct New Generation to take prompt action to ensure that it does not continue to violate the Communications Act or the Rules.

IV. FUTURE COMPLIANCE

11. If, after receipt of this Citation, New Generation violates the Communications Act or the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures of up to \$16,000 for each such violation or each day of a continuing violation and up to \$112,500 for any single act or failure to act.²⁴ In addition, violations of the Communications Act or the Rules can result in seizure of equipment through *in rem* forfeiture actions, as well as criminal sanctions, including imprisonment.²⁵

12. New Generation may respond to this Citation within thirty (30) days after the release date of this Citation either through (1) a personal interview at the closest FCC office, or (2) a written statement. Any written statements should specify what actions have been taken by New Generation to ensure that it does not violate the Rules governing the marketing of radio frequency equipment in the future. Please reference file number EB-08-SE-696 when corresponding with the Commission.

13. Under the Privacy Act of 1974, any statement or information provided by New Generation may be used by the Commission to determine if further enforcement action is required.²⁶ Any knowingly or willfully false statement, or concealment of any material fact, made in reply to this Citation is punishable by fine or imprisonment.²⁷ Please also note that section 1.17 of the Rules requires that New Generation provide truthful and accurate statements to the Commission.²⁸

V. CONTACT INFORMATION

14. The closest FCC Office is the Detroit Office in Farmington Hills, Michigan. Please contact Celia Lewis by telephone, 202-418-7456, if New Generation wishes to schedule a personal interview. The interview should take place within thirty (30) days after the release date of this Citation. Send any written statement within thirty (30) days after the release date of this Citation to:

²⁴ See 47 U.S.C. §§ 401, 501, 503; 47 C.F.R. § 1.80(b)(3). This amount is subject to further adjustment for inflation (*see id.* § 1.80(b)(5)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

²⁵ See 47 U.S.C. § 510.

²⁶ See Privacy Act of 1974, 5 U.S.C. § 552a(e)(3).

²⁷ See 18 U.S.C. § 1001 *et seq.*

²⁸ 47 C.F.R. § 1.17 (“[N]o person subject to this rule shall: (1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and (2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”).

John D. Poutasse
Acting Chief, Spectrum Enforcement Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 3-C366
Washington, D.C. 20554
Re: EB File No. EB-08-SE-696

15. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodations needed. Also include a way we can contact New Generation if we need more information. Please allow at least five (5) days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

VI. ORDERING CLAUSES

16. **IT IS ORDERED** that a copy of this Citation shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested to New Generation Hobbies, 91 Ashburn Crescent, L4L 1G8, Woodbridge, Ontario, Canada.

FEDERAL COMMUNICATIONS COMMISSION

John D. Poutasse
Acting Chief, Spectrum Enforcement Division
Enforcement Bureau